

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

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5 SECURITIES INVESTOR
6 PROTECTION CORPORATION,
7 Plaintiff,

8 v. Adv. Case No. 08-01789(SMB)

9 BERNARD L. MADOFF
10 INVESTMENT SECURITIES,
11 LLC., ET AL.,
12 Defendants.

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14 IRVING H. PICARD, TRUSTEE
15 FOR THE LIQUIDATION OF
16 BERNARD L. MADOFF
17 INVESTMENT SECURITIES
18 LLC, AND BERNARD L.
19 MADOFF,

20 Plaintiff,

21 v. Adv. Case No. 10-04425(SMB)

22 MANUEL JAFFE,
23 Defendant.

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U.S. Bankruptcy Court

One Bowling Green

New York, New York

November 18, 2015

10:01 AM

B E F O R E :

HON STUART M. BERNSTEIN

U.S. BANKRUPTCY JUDGE

Hearing re: 08-01789 - Trustee's Motion to Approve
Allocation and Sixth Interim Distribution

Hearing re: 10-04425 - Application of Becker & Poliakoff to
withdraw as counsel

Transcribed by: Dawn South

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1 P R O C E E D I N G S

2 MS. BROWN: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MS. BROWN: Seanna Brown upon behalf of Irving
5 Picard, Trustee.

6 This the return date of the trustee's motion for a
7 sixth interim allocation and distribution. It's a very
8 important day in this proceeding as we propose to distribute
9 over a billion dollars, which is the second -- if approved
10 -- would be the second largest distribution in this
11 proceeding. We received no objections to the trustee's
12 motion.

13 I know Your Honor is familiar with the papers, but
14 if I may briefly just run through some of the events that
15 got us to today's hearing?

16 THE COURT: Go ahead.

17 MS. BROWN: As you're aware the trustee maintained
18 a reserve for the time-based damages issue. Judge Lifland
19 ruled in fall of 2013 that claimants were not entitled to
20 time-based damages, and the Second Circuit affirmed that
21 ruling in February of 2015.

22 In April the trustee filed his motion seeking to
23 release that reserve and distribute those monies to
24 claimants.

25 Following the filing of the trustee's motion

1 certain claimants filed a cert petition with the United
2 States Supreme Court on the Second Circuit's decision, which
3 led the trustee to adjourn this hearing several times.

4 On October 5th, 2015 the Supreme Court denied
5 cert, which paved the way for this hearing to go forward.

6 As we outline in our supplemental filing the
7 trustee seeks to distribute approximately 1.1 -- I'm sorry
8 -- \$1.8 billion, which is a distribution percentage of
9 approximately 8.2 percent, and if approved it would bring
10 the total aggregate distributions to almost 57 percent.

11 There are 1,063 accounts that will participate in
12 this distribution, and 101 additional accounts will become
13 fully satisfied if this distribution is approved, which
14 brings the total number of totally fully satisfied accounts
15 to 1,264.

16 Including the SIPC advances and this sixth
17 distribution a total of \$9.13 billion will have been
18 distributed to Madoff's victims.

19 It's an important day for the victims and it
20 represents real progress made by the trustee. We would ask
21 that Your Honor approve the application.

22 THE COURT: Is there anyone who wants to be heard
23 in connection with the application?

24 MR. BELL: Yes, Your Honor. Kevin Bell on behalf
25 of the Securities Investor Protection Corporation.

1 This is a monumental day for those of us who were
2 here 2,335 days ago with regard to since this case has
3 started and the skepticism that people had when the case
4 started that the distribution wouldn't get above five
5 percent. To be at near 57 percent is a great achievement on
6 behalf of the trustee and Baker and Hostetler and all the
7 other law firms that served the trustee in this purpose.

8 So SIPC would -- you know, together with the SIPC
9 advances, as Ms. Brown has pointed out, we're over
10 \$9.13 billion, so that any customer who had a claim that was
11 allowed for \$1.1 million has been -- will be fully satisfied
12 upon the entry of an order and the trustee making this
13 distribution.

14 So this is a very significant day in the progress
15 of this case, and on behalf of SIPC, I would ask the Court
16 to enter the order.

17 THE COURT: Is there anyone else who wants to be
18 heard? The record should reflect there's no response.

19 I'll grant the application. It's certainly in the
20 best interest of the creditors of the customers -- creditors
21 and customer estate. So you can submit an order.

22 MS. BROWN: Okay. So thank you, Your Honor.

23 THE COURT: Thank you.

24 Picard versus Jaffe. Go ahead.

25 MS. GORCHKOVA: Good morning, Your Honor, Julie

1 Gorchkova of Becker & Poliakoff, on behalf of the defendant,
2 Manuel Jaffe. We're here on Becker & Poliakoff's motion to
3 be withdrawn as counsel.

4 Becker & Poliakoff was retained to represent
5 Mr. Jaffe in this adversary proceeding in 2011. As with
6 many of our other elderly clients the primary contact for
7 Mr. Jaffe was his son, Phil Jaffe.

8 THE COURT: Where did Mr. Jaffe live?

9 MS. GORCHKOVA: The address that we have on file
10 is in Florida.

11 In July of 2015 the trustee brought to our
12 attention that they were -- that they found out that
13 Mr. Jaffe was deceased. This was news to us, we tried to
14 reach out to Mr. Jaffe's son, who's our primary contact.

15 THE COURT: Did your client -- do you send any
16 bills to your clients in the course of these cases?

17 MS. GORCHKOVA: Yes.

18 THE COURT: Did you send a bill to Mr. Jaffe after
19 he died?

20 MS. GORCHKOVA: Yes, the bills -- I'm not sure
21 when the last bill was sent, but I do know that the bills
22 were sent and that they were being paid. And it didn't come
23 to our attention -- we were unable to contact Phil Jaffe
24 until July of 2015, and I tried to contact him again as
25 recent as two days ago, and he still hasn't responded.

1 I understand that the trustee's opposition to our
2 motion, you know, points out certain misstatements that --
3 for instance, it indicates that the trustee's counsel
4 consented. I apologize, that was some sort of an oversight,
5 that must have carried over from a previous motion.
6 Nonetheless, you know, Mr. Jaffe is deceased and we don't
7 have a client that we can represent.

8 THE COURT: Okay. Thank you.

9 MS. GORCHKOVA: Thank you, Your Honor.

10 MR. HOCHMUTH: Good morning, Your Honor, Farrell
11 Hochmuth here on behalf of Irving Picard, Trustee.

12 Your Honor, the trustee's objection to the
13 withdrawal motion filed is on several bases.

14 First it is on the basis that the affidavit in
15 support of the motion to withdraw contains several
16 misstatements.

17 First of all, as noted by counsel, the trustee
18 never provided consent. We had no indication that counsel
19 intended to withdrawal until we reviewed the motion to
20 withdraw.

21 THE COURT: So what do you want them to file
22 another application?

23 MS. HOCHMUTH: Your Honor, what we would ask is
24 that counsel not be permitted to withdraw in this case until
25 the proper parties are substituted in this action --

1 THE COURT: And who does counsel represent?

2 MS. HOCHMUTH: Counsel as of now represents I
3 would say the estate of Mr. Jaffe.

4 THE COURT: They don't represent the estate.

5 MS. HOCHMUTH: I'm sorry, Your Honor?

6 THE COURT: They don't represent the estate. The
7 administrator or the executor or executrix would select who
8 represents the estate.

9 MS. HOCHMUTH: Your Honor, the trustee is in the
10 process of opening an estate as a creditor for Mr. Jaffe in
11 Minnesota. Mr. Jaffe died in Minnesota.

12 THE COURT: Is that where -- oh, he died in
13 Minnesota?

14 MS. HOCHMUTH: He died in Minnesota, he has a
15 Minnesota certificate of death, and he also had property in
16 Minnesota.

17 THE COURT: So why don't you just do that? I
18 don't understand who Becker & Poliakoff represents if I
19 don't allow them to withdraw.

20 MS. HOCHMUTH: Your Honor, we would ask that
21 Becker & Poliakoff assist us in getting the proper party
22 substituted before the court, and at that point the trustee
23 has no objection to them withdrawing.

24 THE COURT: But what's their duty to do so? In
25 other words, Mr. Jaffe died.

1 MS. HOCHMUTH: Yes, Your Honor.

2 THE COURT: Okay. And I looked at the rules and I
3 don't see any obligation on the part of the attorney for the
4 deceased client to do anything other than make a statement
5 on the record, which obviously they should have made. But
6 assuming they didn't know, you know, there's a statement in
7 the September 4th declaration of Ms. Chapman (ph) that
8 Mr. Jaffe is dead, and that starts the 90 days.

9 So why don't you just file a one-page motion to
10 substitute the estate, the motion will be adjourned
11 (indiscernible) and then you can go and substitute the
12 estate?

13 MS. HOCHMUTH: Your Honor, we can't substitute the
14 estate now because it's not been opened. Until as you noted
15 the personal representative for the estate is appointed by
16 the court in Minnesota --

17 THE COURT: Right. But you can still --

18 MS. HOCHMUTH: -- we cannot substitute.

19 THE COURT: Look, you have a 90-day window --

20 MS. HOCHMUTH: Your Honor --

21 THE COURT: Let me just finish. If I treat
22 Ms. Chapman's September 4th declaration as the statement of
23 death under Rule 25 you have 90 days from September 4th, you
24 still have time, to file a motion to substitute. I don't
25 understand why you can't file a motion to substitute now. I

1 understand there may not be an estate yet or an estate
2 that's probated or a personal representative who's
3 appointed, but you've done all you can do under the rules.
4 And very often those kind of motions are extended until a
5 personal representative is appointed. That's all.

6 MS. HOCHMUTH: Your Honor we have in cases where
7 the estate has not been opened agreed with counsel to extend
8 the 90-day deadline. Here I don't believe that the 90-day
9 deadline has begun to run, because until they provide us
10 with the name of the personal representative that we can
11 substitute --

12 THE COURT: That's not what the rule says. Look,
13 if you don't think it started to run, as I understand the
14 rule you could proceed and just get a judgment against
15 Mr. Jaffe and we'd probably bind this estate if no statement
16 is filed, if you don't believe that's in the statement. If
17 that is the statement then you don't have to do anything,
18 just proceed and litigate the case.

19 MS. HOCHMUTH: When the estate is -- would Your
20 Honor entertain a motion to substitute that when the estate
21 is opened at that point --

22 THE COURT: Why don't you just make a motion. I
23 don't think the opening of the estate is necessarily the
24 triggering event, I could be wrong, I think you just make a
25 motion to substitute under the rule. Isn't that all you

1 have to do?

2 MS. HOCHMUTH: Typically, Your Honor, we would
3 want the estate to be open and be a valid legal entity to
4 substitute.

5 THE COURT: What happens if the estate is not open
6 in your words within the 90 days?

7 MS. HOCHMUTH: Your Honor, in the past with
8 counsel we have stipulated to extend a 90-day deadline if an
9 estate is not open, because oftentimes it does take longer
10 than 90 days to get an estate open. But here if counsel is
11 permitted to withdraw we don't have the ability to extend
12 that deadline.

13 THE COURT: What's counsel's authority to
14 stipulate on behalf of an estate that you're telling me
15 hasn't even been formed?

16 MS. HOCHMUTH: I think that they would be
17 stipulating on behalf of their client until that estate is
18 formed and substituted in the action.

19 THE COURT: Their client is dead, they can't
20 stipulate on behalf of their client.

21 I think that there's a distinction between the
22 estate being created and a personal representative being
23 appointed or some application being made to the appropriate
24 probate court. There's an estate. Isn't that the successor
25 as a matter of law to the decedent?

1 MS. HOCHMUTH: Not necessarily, Your Honor. If
2 the decedent does not have assets that require a probate
3 estate then there are times when a probate estate is not
4 open. In that case the proper party under the federal rules
5 is the beneficiary -- primary beneficiary of the deceased
6 person's assets.

7 THE COURT: So why don't you join his son as a
8 defendant?

9 MS. HOCHMUTH: At this point, Your Honor, we
10 aren't aware if the son or -- there is also a surviving
11 spouse, is the primary beneficiary.

12 THE COURT: Well the problem is I don't -- I mean
13 they don't want to stipulate, I'm telling you I'm not sure
14 they can stipulate, that's a separate issue. If you don't
15 think that what Ms. Chapman filed was a statement of death
16 then I guess you can proceed with the action.

17 I think the simplest thing is for you to file a
18 statement of death and make clear that the 90 days start to
19 run. Because if it's not a statement of death and they're
20 right you're still in the case and you have to represent a
21 client as strange as that may sound because they can proceed
22 against the client until a statement of death is filed.

23 So file a statement of death, that'll start your
24 90 days. I'll adjourn the motion. I'll adjourn it to some
25 time before the 90th day, which is around December 4th I

1 guess. So, I'll adjourn it for a week. File the statement
2 of death, and you know, that's it.

3 I just don't know of any authority to compel them
4 to continue to represent someone who's dead simply because
5 you can't -- you know, there's no estate.

6 MS. HOCHMUTH: We have several cases, Your Honor,
7 where decedent -- where defendants have died and their
8 attorneys have worked with us to get the proper party
9 substituted.

10 THE COURT: I understand that, but are you
11 prepared to -- what are you -- have you given them all the
12 information you have?

13 MS. GORCHKOVA: I'm sorry, Your Honor, that's
14 exactly just the one point that I wanted to make was that
15 it's not that we're not cooperating, and as you know in the
16 past in other cases where our clients have died we have
17 cooperated with the (indiscernible). And to the extent we
18 have information we provided it.

19 But we've asked Mr. Jaffe's son for that
20 information, he hasn't responded. I can't provide you with
21 information that I don't have.

22 THE COURT: Why don't you take a deposition of
23 Mr. Jaffe's son?

24 MS. HOCHMUTH: We may need to do that, Your Honor.

25 THE COURT: He's probably the one who knows --

1 who's in the best position to know if there were
2 beneficiaries or, you know, whether he's got siblings, I
3 don't know.

4 MS. HOCHMUTH: I suspect when -- there's a hearing
5 currently scheduled on December 14th in the Minnesota
6 probate court, I suspect we will hear from Mr. Jaffe before
7 that hearing. Hopefully at that hearing either Mr. Jaffe or
8 another independent personal representative will be
9 appointed. We will have an estate at that time that we can
10 then move to substitute.

11 THE COURT: And you think I can extend the 90 days
12 without anybody's consent?

13 MS. HOCHMUTH: Your Honor, we have typically done
14 this with counsel as a stipulation to extend the 90-day
15 deadline.

16 THE COURT: I understand that.

17 MS. HOCHMUTH: But yes, Your Honor, I believe you
18 have the authority to extend the deadline to allow a probate
19 estate to be open that could be substituted in.

20 THE COURT: Look, I'll adjourn this until
21 December 1, but file your statement of death on the record
22 so there's no question, and then you can figure out what to
23 do, but I just don't know how I can keep them in the case if
24 their client is dead and they don't represent the estate.
25 All right.

1 MS. HOCHMUTH: Thank you, Your Honor.

2 THE COURT: Okay. And if you want to write me a
3 letter before that explaining that I have authority to
4 extend the 90 days I'm happy to read it, without their
5 consent obviously.

6 MS. HOCHMUTH: Thank you, Your Honor.

7 THE COURT: All right?

8 (Whereupon these proceedings were concluded at 10:15
9 AM)

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I N D E X

RULINGS

PAGE

Trustee's Motion to Approve Allocation and Sixth

Interim Distribution

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C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Dawn South

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Date: November 18, 2015

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